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MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

No. 77-1027

JOHN DOE, *et al.*, PETITIONERS

v.

JOHN L. McMILLAN, *et al.*, RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

**PETITIONERS' REPLY TO BRIEF FOR RESPONDENTS
PUBLIC PRINTER AND SUPERINTENDENT
OF DOCUMENTS IN OPPOSITION**

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It is undisputed that 92 copies of the Report of the House Committee on the District of Columbia (H.R. Report 91-1681, 91st Cong., 2d Sess.) were distributed to members of the public pursuant to standing orders, and another 80 copies of the Report were delivered to foreign legations as provided by 44 U.S.C. §1717 (Reply brief 4).

Respondents' answer is to characterize the distribution as "routine and ordinary" and in direct response to "standing orders". (*Id.* at 6). Respondents contend that no copies of the Report were provided to the public in response to specific re-

quests (*id.*) and that such distribution was within the legitimate legislative purpose of the "informing function" of Congress, *Doe v. McMillan*, 412 U.S. 306, 314 (1973).

We continue to assert that the distribution was excessive, and as such beyond the "legitimate legislative purpose of Congress", *Gravel v. United States*, 408 U.S. 606, 625 (1972). However, in determining whether the distribution was "excessive", we ask this Court to consider the qualitative, not merely the quantitative nature of the distribution of the Report. A qualitative assessment of the scope of the distribution reveals that the Report's availability to the general public went well beyond the "limited" distribution asserted by Respondents. We will now demonstrate that as a direct result of the "limited" distribution, which was "routine and ordinary", the Report is currently available to any member of the public, both at home and abroad.

The Report is available to members of the public: 1) At the Library of Congress in Washington, D.C. (44 U.S.C. § 1718); 2) In at least 34 designated Regional Depository Libraries across the country (44 U.S.C. § 1912); 3) At several law firms, public and university libraries and law publishers (Pet. App. 53a - 60a) and of great significance here, through the Congressional Information Service, Inc. (Pet. App. 58a), a private catalogue and microfiche service, which provides to the public the full text collection of *all* post 1969 Congressional hearings, prints and documents including H.R. Report 91-1681. [See, 1 CONG. INFORMATION SERVICE INDEX 135 (1970) and Appendix].

The Congressional Information Service, Inc., (CIS) located in Washington, D.C., sells a full text microfiche library of *all* Congressional hearings, prints, documents, and reports beginning in 1970. Any individual or group, at home or abroad can purchase the entire set or individual reports. CIS provides a bound catalogue index of all microfiche publications. This index offers a descriptive abstract of the contents of H.R. Report 91-1681 (CIS No. H303-30, Appendix) from which *any* person could obtain a copy of the full Report, directly from CIS or any

library that subscribes to the CIS service. In addition, the 34 Regional Depository Libraries are required to receive and retain one copy of all government publications either in printed or microfiche form as provided by 44 U.S.C. § 1912.

In sum, the scope and effect of the "routine", "ordinary" and "limited" distribution of H.R. Report 91-1681 was most extraordinary. The Report is now and will always be available to any member of the public who desires to read the contents of the actionable Report. Respondents have lost their immunity under the Speech or Debate Clause. Accordingly, the petition for writ of certiorari should be granted.

Respectfully submitted,

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Part One

**Abstracts of
Congressional
Publications
and Legislative
Histories**



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**H303-30 INVESTIGATION AND STUDY OF THE
PUBLIC SCHOOL SYSTEM OF THE DISTRICT OF
COLUMBIA. Dec. 8, 1970. 91-2. †**

•Item 1008-A. viii+450 p. il. H. Rpt. 91-1681.

Report of the *Special Select Subcom on District of Columbia Government* investigation of D.C. Public Schools. Presents summary (p. 2-6) and supporting documentation (p. 6-448) of Subcom negative findings on the quality of learning, administration, personnel selection, student discipline, law and order, fiscal management, and educational innovation in D.C. schools. Documentation includes:

D.C. Board of Education recommendations and budget estimates to increase school safety (p. 16-22).

Text of D.C. contract with Washington Teachers' Union Local 6, AFT, Jan. 1969-June 1970, text (p. 24-82).

Description of discontinued black students' Freedom School at Eastern High School (p. 87-95).

D.C. student-developed "Student Bill of Rights and Responsibilities," text (p. 95-101).

Documentation, by individual schools, from cross-section study of 52 public schools (p. 104-446), including interview transcripts, correspondence from teachers, parents and administrators, city and school newspaper articles, school memoranda and test papers, and Subcom comments treating problems in theft, drug abuse, discipline, morale, reading skills, vocational training, absenteeism, racism, and black militance. Includes:

- a. Open-classroom pilot project at Hearst Elementary School, description (p. 114-120, 124-127).
- b. Comparison of D.C. pupil reading skills with other big cities, tables (p. 120-122).
- c. Rejected Francis Jr. High School grant proposal for a total-school approach to improve reading skills, Aug. 5, 1969, text (p. 175-192).
- d. Proposal, unadopted, to promote safe streets through community input into school work-study programs at the junior high level, text (p. 201-208).
- e. Proposal for construction of a special D.C. school to teach maladjusted and emotionally disturbed children, text (p. 341-354).

Subcom conclusions and recommendations, summary (p. 448-450).